

Industry Circular



Internal Revenue Service

Alcohol, Tobacco, and Firearms Division
Washington, D.C. 20224

Industry Circular No. 70-22

July 16, 1970

LOSSES ALLOWABLE UNDER SECTION 5008(c)(1)(A)(ii), INTERNAL REVENUE CODE

Proprietors of Distilled Spirits
Plants and Others Concerned:

Revenue Ruling 70-366, concerning losses allowable under section 5008(c)(1)(A)(ii), Internal Revenue Code, will be published in the Internal Revenue Bulletin on July 13, 1970. The ruling will read substantially as follows:

The Internal Revenue Service has been asked to discuss the conditions under which credit or refund of the distilled spirits tax may be allowed under section 5008(c)(1)(A)(ii) of the Internal Revenue Code of 1954.

The cited subsection of the statute establishes three basic conditions which must exist before credit or refund may be allowed. These are: (1) the spirits for which claim is to be filed must not have been removed from the distilled spirits plant to which they were withdrawn from bond on payment or determination of tax, (2) such spirits must, in fact, have been lost, and (3) the loss of the spirits must have been caused by "flood, fire, or other disaster."

The Service does not expect any problems in making determinations as to the first of the aforementioned conditions. It recognizes, however, that determinations to be made on the other two points can be affected by a wide variety of circumstances, many of which could result in difficult questions of interpretation. To minimize the need for consideration of questionable cases, therefore, the following general rules are held to apply:

On Questions of Loss

1. To be considered lost under section 5008(c)(1)(A)(ii) of the Code, distilled spirits must have been physically lost, by absolute destruction or disappearance thereof; or
2. They must have been condemned by public health authorities (as a result of a "flood, fire or other disaster") and destroyed; or


3. The Assistant Regional Commissioner (Alcohol, Tobacco and Firearms) must have found, on the basis of chemical analysis and other physical considerations, that the spirits themselves (and not just the containers in which they repose) have been so badly damaged or contaminated by the applicable "flood, fire, or other disaster" that no procedure available at the distilled spirits plant involved can restore them to a condition which would make them suitable for use in beverage products.

On Questions as to Whether a
Particular Incident is a Flood,
Fire, or Other Disaster

1. In general, whenever water escapes from the banks of any natural or man-made, open body of either flowing or quiescent water and encroaches on adjacent land areas, the resulting inundation of such adjacent land areas would be considered to be a flood. For the purpose of applying the provisions of section 5008(c)(1)(A)(ii) of the Code, there could be other circumstances which the Service might consider to be a flood. However, encroachment of water caused by such things as burst water mains, use of fire hoses or other fire-fighting equipment, or sprinkler leakage would not be so considered.
2. Any incidence of whole or partial destruction or consumption of structures or material by flame would, of course, be a fire, and the Service anticipates no particular problems in making determinations as to this question. Here, however, it should be noted that although encroachment of water from fire hoses or sprinklers (as discussed in 1, above) would not be considered to be a flood, losses resulting from such encroachment might, under certain circumstances, be considered as having occurred "by reason of" fire.
3. In general, a disaster would be an incident (of much greater scope and severity than mere accident) involving extensive loss and damage to property, or injury or death to persons, within a given community or geographic area. It would include such things as earthquakes and tornadoes, but would not include riots or other civil disorders, vandalism, or acts of war.

This ruling will be effective on July 13, 1970, the date of its publication in the Internal Revenue Bulletin, and will not be effective as to claims on which final action has been taken before that date.

Inquiries regarding this circular should refer to its number and be addressed to your Assistant Regional Commissioner, Alcohol, Tobacco and Firearms.


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